

**§ 653.3 Purpose.**

The purpose of this part is to require a recipient to implement an anti-drug program to deter and detect the use of prohibited drugs by covered employees.

**§ 653.5 Applicability.**

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to a recipient under—

(1) Section 3, 9, or 18 of the Federal Transit Act, as amended (FT Act); or

(2) Section 103(e)(4) of title 23 of the United States Code.

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR parts 219 and 382, as appropriate, and § 653.83 of this part for its railroad operations, and this part for its non-railroad operations, if any.

NOTE: For recipients who operate marine vessels, see also Coast Guard regulations at 33 CFR part 95 and 46 CFR parts 4.5, and 16.)

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 6, 1995]

**§ 653.7 Definitions.**

As used in this part—

*Accident* means an occurrence associated with the operation of a vehicle, if as a result—

(1) An individual dies;

(2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle;

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from revenue service.

*Administrator* means the Administrator of the Federal Transit Administration or the Administrator's designee.

*Anti-drug program* means a program to detect and deter the use of prohibited drugs as required by this part.

*Canceled test* means a test that has been declared invalid by a Medical Re-

view Officer. It is neither a verified positive nor a verified negative test, and includes a specimen rejected for testing by a laboratory.

*Certification* means a recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. (See § 653.77 for certification requirements.)

*Chain-of-custody* means the procedures in part 40 of this title concerning the handling of a urine specimen.

*Consortium* means an entity, including a group or association of employers, operators, recipients, subrecipients, or contractors, which provides drug testing as required by this part, or other DOT drug testing rule, and which acts on behalf of the employer.

*Contractor* means a person or organization that provides a service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

*Covered employee* means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

*Disabling damage* means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

*DOT* means the United States Department of Transportation.

*DOT agency* means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring drug testing (see parts 199, 219, 382, and 653 of this title; 14 CFR part 121, appendix J; 33 CFR part 95; and 46 CFR parts 4 and 16).

*Employer* means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

*FTA* means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

*Large operator* means a recipient or subrecipient primarily operating in an urbanized area of 200,000 or more in population.

*Medical Review Officer (MRO)* means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer’s drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his or her medical history and any other relevant biomedical information.

*Positive rate* means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals of random tests required by this part.

*Prohibited drug* means marijuana, cocaine, opiates, amphetamines, or phencyclidine.

*Railroad* means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas,

without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

*Recipient* means an entity receiving Federal financial assistance under section 3, 9, or 18, of the FT Act, or under section 103(e)(4) of title 23 of the United States Code.

*Refuse to submit* means that a covered employee fails to provide a urine sample as required by 49 CFR part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

*Safety-sensitive function* means any of the following duties:

- (1) Operating a revenue service vehicle, including when not in revenue service;
- (2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License;
- (3) Controlling dispatch or movement of a revenue service vehicle;
- (4) Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used in revenue service, unless the recipient receives funding under 49 U.S.C. 5309, is in an area less than 50,000 in population and contracts out such services, or funding under 49 U.S.C. 5311 and contracts out such services.
- (5) Carrying a firearm for security purposes.

*Small operator* means a recipient or subrecipient primarily operating in a nonurbanized area or in an urbanized area of less than 200,000 in population.

*Vehicle* means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A *mass transit vehicle* is a vehicle used for mass transportation or for ancillary services.

*Verified negative (drug test result)* means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use.

*Verified positive (drug test result)* means a drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use.

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**§ 653.9 Preemption of State and local laws.**

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and any requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

**§ 653.11 Other requirements imposed by an employer.**

An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

**§ 653.13 Starting date for drug testing programs.**

(a) *Large employers.* Each recipient operating primarily in an urbanized area of 200,000 or more in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1995.

(b) *Small employers.* Each recipient operating primarily in a nonurbanized area or in an urbanized area of 200,000 or less in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1996.

(c) An employer shall have an anti-drug program that conforms to this part by January 1, 1996, or by the date

the employer begins operations, whichever is later.

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 3, 1995]

**Subpart B—Program Requirements**

**§ 653.21 Requirement to establish an anti-drug program.**

Each employer shall establish an anti-drug program consistent with the requirements of this part.

**§ 653.23 Required elements of an anti-drug testing program.**

An anti-drug program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use in the workplace, including the consequences associated with prohibited drug use. This policy statement shall include all of the elements specified in § 653.25. Each employer shall disseminate the policy consistent with the provisions of § 653.27.

(b) An education and training program which meets the requirements of § 653.29.

(c) A testing program, as described in § 653.31 that meets the requirements of this part and part 40 of this title.

(d) Procedures for assessing the covered employee who has a verified positive drug test result as described in § 653.37.

**§ 653.25 Policy statement contents.**

The policy statement shall be adopted by the local governing board of the employer or operator, be made available to each covered employee, and shall include, at a minimum, detailed discussion of:-

(a) The identity of the person designated by the employer to answer employee questions about the anti-drug program.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior that is prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs under the provisions of this part.